A **SYARIKAT PERUMAHAN NEGARA BHD**

v.

SUPERNESA SDN BHD; ECOMAHIR SDN BHD (THIRD PARTY)

B

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
DAVID WONG DAK WAH J
[CASE NO: K22-220-2009-II]
19 AUGUST 2011

C

LAND LAW: *Sale and purchase of land - Termination - Termination due to dispute as to ownership of land - Plaintiff purchaser released title deeds to registered owner upon threat of legal action instead of returning them to defendant seller - Whether plaintiff justified in doing so*

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The defendant purchased six parcels of land from the third party herein pursuant to two sale and purchase agreements entered into between the parties. It followed thereafter that the third party forwarded the original title deeds for four parcels of land to the defendant. Notwithstanding, the defendant paid the full consideration sum of RM5,185,000 to the third party for the purchase of the six parcels of land. The defendant in turn entered into a Development Agreement with the plaintiff for the six parcels of land for the same consideration sum. Subsequently, a dispute arose as to the ownership of the six parcels of land and the registered owner, one Chua Chin Sing, demanded for the return of the four title deeds. The plaintiff then commenced this action against the defendant to claim for the consideration sum paid. The plaintiff also released the four title deeds to the registered owner. The third party claim was initiated by the defendant for damages in respect of any judgment sum, interest, costs and any sum made against the defendant.

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The issue for determination was whether, under the circumstances of the case, the plaintiff was justified in releasing the four title deeds to the registered owner instead of to the defendant and/or to the third party.

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Held (allowing the plaintiff's claim provided the four title deeds were returned to defendant):

I

(1) The registered owner did not initiate any legal action against the plaintiff or the third party. All the registered owner did was to inform the plaintiff that it would be initiating legal

action if the title deeds were not returned. The fact that the plaintiff returned the title deeds to the original owner before any concrete legal action was taken was illogical. (para 13)

(2) It was not understood why the plaintiff took the registered owner's words in its entirety before getting any evidence as to the truth of his claim. Although the plaintiff claimed to have returned the four title deeds after receiving no explanation from the third party as to the registered owner's claim, the absence of any explanation from the third party did not automatically establish the truth of the said claim. The plaintiff should have left the issue to be decided by a court of law if the registered owner proceeded to initiate legal action against the third party and not act in accordance to its own views. (para 14)

(3) The plaintiff failed to consider whether the registered owner had a cause of action to premise its legal action against the plaintiff. From a contractual point of view, there was no cause of action as the plaintiff and the registered owner had no agreement between themselves. The plaintiff's agreement was with the defendant. From a tort point of view, the best that the registered owner could have come up with was to claim for wrongful possession of the title deeds. But that too was an uncertainty as the plaintiff obtained the four title deeds from the defendant through an agreement. At no stage was there any allegation that the defendant obtained the four title deeds wrongfully. Therefore the plaintiff had a complete answer to any claim by the registered owner for wrongful possession. The plaintiff should have deposited the four title deeds with the court or a third party stakeholder pending the full outcome of the suit. (para 17)

(4) The plaintiff's entire justification for the return of the title deeds to the registered owner was to avoid any legal complication with the registered owner. Under the circumstances of the case, there was no justification for the plaintiff to release the four title deeds to the registered owner instead of to the defendant and/or the third party. However, since both the defendant and third party consented to a judgment being entered against them provided that the four titles were returned to the defendant and subsequently to the third party, it would be ordered as such. (paras 13, 18-20)

For the plaintiff - Japar Esteban; M/s Esteban A'Liq & Co
For the defendant - Tan Chik Tiam (Chuan Kian E with him); M/s CT Tan & Co
For the 3rd party - Arthur Bonnie; M/s Tan Jack Arthur & Co

Reported by Usha Thiagarajah

JUDGMENT

David Wong Dak Wah J:

Proceeding

[1] The plaintiff's claim against the defendant is for the sum of RM5,185,000 being land costs incurred by the plaintiff for the purchase of six parcels of land. The defendant admits to the claim but will only pay the same back to the plaintiff if the title deeds are returned back to them.

[2] The defendant has also made a claim of RM5,185,000 against the third party which also admits to the claim but will pay the same back to the defendant if the title deeds are returned back to them.

Background Facts

[3] The defendant had purchased six parcels of land from the third party through two sale and purchase agreements, one dated 17 August 2005 for four pieces of land held under CL015047088, CL015028716, CL015027764 and CL015046670 and the second sale and purchase agreement dated 17 August 2005 for two land held under CL 015045940 and CL 015045959. On 23 November 2005, the third party through its solicitors forwarded the four original titles to the defendant. At that point of time, the four titles were free from encumbrances. Despite the fact that the defendant was only given four title deeds, the defendant had paid the full consideration of RM5,185,000 to the third party for the land cost of the said six parcels of land.

[4] The defendant in turn also entered into a Development Agreement (DA) with the plaintiff for the six parcels of land for the consideration of RM5,185,000. It is undisputed that the third party has received RM5,185,000 from the defendant who in turn received RM5,185,000 from the plaintiff.

[5] Sometime in 2009, there was dispute as to the real owners of the six parcels of land. The registered owner, one Chua Chin Sing, had on 12 May 2009 and 17 December 2009 wrote to the plaintiff to demand for the return of the title deeds. Because of the demands by the registered owner, the plaintiff took out this suit on 29 October 2009 against the defendant to claim for the amount paid to the defendant which is RM5,185,000. On 13 August 2010, the plaintiff returned the four title deeds to the registered owner.

[6] The plaintiff initiated an action against the defendant for the cost of the land paid to the defendant as the contract had been terminated. The defendant in turn initiated this third party claim against the third party for damages to the extent of any judgment sum, interest, costs and any sum awarded to the plaintiff against the defendant.

Issue

[7] In my view the issue in this case is as set out by counsel for the plaintiff and that is:

> Whether, under the circumstances of the case, it was justifiable for the Plaintiff to release the four title deeds to the registered owner instead of the Defendant and/or the Third Party?

Findings Of The Court

[8] Counsel for the plaintiff had set out the chronology of events in his submission and urges me to take them into account in my deliberation. The chronology is as follows:

(a) On 15 October 2005, the plaintiff paid the full payment of RM5,185,000 to the defendant pursuant to the development agreement entered between the plaintiff and defendant.

(b) The defendant on 26 October 2005 and 27 October 2005 lodged their private caveat on the parcels of land.

(c) On 17 March 2006, the registered owner lodged and registered a collector's caveat against the six parcels of land.

(d) On 23 October 2008, the registered owner lodged his private caveat against on the six parcels of land.

(e) On 17 November 2008 another collector's caveat is lodged against the six parcels of land.

(f) On 1 February 2008, the plaintiff wrote to the defendant demanding that the defendant rectify the irregularities in the power of attorneys, removal of caveats and request for the remaining two title deeds.

(g) On 5 December 2008, the plaintiff received a copy of the letter of termination of the two agreements between the registered owner and the third party which states that the ground for termination is that the third party had failed to pay full payment of the purchase price.

(h) On 30 December 2008, the plaintiff again wrote to the defendant to resolve all the issues with the registered owner of the lands and should the defendant failed to do so, the plaintiff may terminate the development agreement.

(i) On 20 January 2009, the plaintiff terminated the development agreement.

(j) On 9 November 2009, the solicitor for the registered owner wrote to the plaintiff for the return of the title deeds within seven days from the date of the letter.

(k) On 9 November 2009, the defendant wrote to the plaintiff to seek time to remedy the dispute between the third party and the registered owner.

(l) On 17 December 2009, the registered owner's solicitor demanded for the return of the title deeds within 14 days, failing which he will take legal proceeding against the plaintiff.

(m) On 13 August 2010, the plaintiff returned the four title deeds to the registered owner.

[9] In order to justify the return of the four original title deeds to the registered owner, the plaintiff's counsel in his submission laid down the plaintiff's reasons for doing so. For convenience, I shall summarize the plaintiff's justification as follows:

[10] First, the plaintiff submitted that as there was a demand from the registered owner for the return of the title, failure to do so would render the registered owner commencing a legal action

against the plaintiff. In other words, the plaintiff returned the title deeds to avoid any legal complication which the plaintiff might endure.

[11] Secondly, the plaintiff argues that after terminating their contractual relationship with the defendant, the defendant no longer has any right in claiming possession of the titles deeds. Therefore, the plaintiff submitted that they had no option but to return the title deeds to the original owner.

[12] Thirdly, the plaintiff submitted that the basis of the termination of the sale and purchase agreement between the third party and the registered owner is the failure of the third party to fully settle the purchase price. Therefore, without any explanation from the third party for the failure to make full payment of the purchase price, the plaintiff believed that the third party's action amounted to fraud. The plaintiff returned the title deeds to the original owner to prevent from being implicated as a party to the fraud.

[13] With all due respect to the counsel for the plaintiff, I fail to understand the logic or reasonableness of the justification provided for by them in returning the title deeds to the registered owner. Having read the plaintiff's submission, I can see that the basis of the plaintiff's entire justification is to avoid any legal complication with the registered owner. It must be noted here that the registered owner did not initiate any legal action against the plaintiff or the third party. All the registered owner did was informed the plaintiff that they would be initiating legal action if the title deeds were not returned. The fact that the plaintiff returned the title deeds to the original owner before any concrete legal action was taken is beyond me.

[14] I also fail to see why the plaintiff took the registered owner's words in its entirety before getting any evidence as to the truth of the registered owner's claim. As stated above, the plaintiff returned the title deeds after receiving no explanation from the third party as to the registered owner's claim. Absence of any explanation from the third party does not automatically mean that the registered owner's claim is the truth. The plaintiff should have left the issue to be decided by a court of law if the registered owner proceeded to initiate legal action against the third party and not act in accordance to its own views.

[15] During the course of the proceedings, the defendant submitted that the plaintiff should not have returned the original title deeds to the registered owner but instead the plaintiff should have waited for the outcome of the registered owner's legal action against the third party. I now reproduce the plaintiff's answer to this contention:

> Whereas, the contention of the Plaintiffs should wait for the registered owner action against the Third Party is a great mistake as the said owner did not seek for specific performance of the SAP. Apart from the title deeds, the said registered owner did not suffer any actual loss or damages from the said SAP termination. It was the Third Party, whom should commence legal action against the owner and not otherwise.

[16] Once again, I am unable to grasp the logic behind the plaintiff's answer. I agree with the counsel for the defendant that the plaintiff should have waited and not act according to its own opinion.

[17] Further the plaintiff's counsel had not, in my view considered under what cause of action can the registered owner premise for any legal action against the plaintiff. From a contractual point of view, there is no cause of action as the plaintiff and registered owner had no agreement oral or otherwise. The plaintiff's agreement is with the defendant. From a tort point of view, the best the registered owner could muster may be wrongful possession of the relevant title deeds. Again this cause of action is dubious as the plaintiff obtained the four title deeds from the defendant through an agreement. At no stage is there any allegation that the defendant had obtained the four title deeds wrongfully, thus the plaintiff has a complete answer to any claim by the registered owner for wrongful possession of the same. In my view the plaintiff, if it was minded to do so, could deposit the four title deeds with the courts or a third party stakeholder pending the full outcome of this suit.

Conclusion

[18] Based on the reasons above, I find that under the circumstances surrounding the whole case, there is no justification for the plaintiff to release the four title deeds to the registered owner instead of the defendant and/or the third party.

[19] However, since both the defendant and the third party have consented to a judgment being entered against them provided that the said four titles are returned to the defendant and subsequently to the third party, I will order as such.

[20] Therefore, I order that the plaintiff's claim is allowed provided that the plaintiff returns the four title deeds to the defendant.

[21] As for the defendant's claim against the third party, I order that defendant's claim is allowed provided that the defendant returns the four titles deeds to the third party.

Order accordingly.